

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7466

Investigation into Petition filed by Vermont)
Department of Public Service Re: Energy)
Efficiency Utility Structure)

Order entered: 1/29/2009

SCHEDULING ORDER

I. BACKGROUND

On August 28, 2008, the Vermont Department of Public Service ("Department") filed a petition requesting that the Vermont Public Service Board ("Board") open an investigation, pursuant to 30 V.S.A. §§ 2(c), 209(a), and 218(b), for the purpose of considering a change in the structure of Vermont's Energy Efficiency Utility ("EEU").

On October 1, 2008, a prehearing conference was held in this docket. At the prehearing conference, parties proposed additional time in the schedule for settlement negotiations. Parties were given until December 1, 2008, to reach a settlement or to propose a schedule for the remainder of the proceedings.

On December 1, 2008, the Department filed with the Board a progress report on the settlement negotiations. The Department proposed to retain the services of a consultant with expertise in the area of public energy efficiency programs in order to evaluate the proposed EEU structure. The Department requested an additional six months in the schedule to hire a consultant and develop a report, and requested a deadline of June 2009 for the parties to file a status report, with a status conference to follow shortly after.

On December 4, 2008, the Board issued a memorandum asking for comments on the Department's proposal to extend the schedule to provide time for it to hire a consultant to evaluate the proposed EEU structure. On December 10, 2008, Central Vermont Public Service Corporation ("CVPS"), Conservation Law Foundation ("CLF"), Green Mountain Power

Corporation ("GMP"), and the Group of Municipal Electric Utilities ("GMEU") filed comments on the Department's request for the time extension. On December 11, 2008, Vermont Energy Investment Corporation ("VEIC") filed comments.

On December 31, 2008, the Board conducted a status conference to further discuss the Department's request for a schedule extension and the retention of a consultant to evaluate the proposed EEU structure. At the status conference, the Department agreed to distribute the Request for Proposals ("RFP") it had issued to evaluate the EEU structure and the list of entities to which the Department sent the RFP. Parties were given the opportunity to file comments, regarding the Department's RFP and schedule for the remainder of the proceeding. A summary of the comments filed is provided below.

II. PARTIES' COMMENTS

At the December 31, 2008, status conference, parties were given the opportunity to file comments and reply comments on the following: (1) the Department's RFP; (2) funding sources for the retention of a consultant; and (3) proposed schedule for the remainder of the proceeding. On January 9, 2009, comments were filed by: the Department; the City of Burlington Electric Department ("BED"); CVPS; CLF; GMP; GMEU; Vermont Electric Power Company, Inc. ("VELCO"); and VEIC. On January 16, 2009, reply comments were filed by the Department and CVPS.

With regard to its RFP, the Department maintains that the goal of hiring a consultant is not duplicative of the processes to date, but rather to assist the Department in evaluating the "Order of Appointment" structure to determine whether it is likely to achieve the goals of the restructuring process in a real market setting. The Department also indicates that the consultant will be available to analyze any objections to the proposed structure. The Department supports the continuation of settlement negotiations while it works with its consultant. The Department also supports a meeting between the settlement group and the Department's consultant to facilitate the process toward settlement.

BED and VEIC support the hiring of an outside consultant, but believe the work of the consultant should be built on the foundation of the substantial record already assembled to date

and the expertise of the existing parties. GMP supports the request for an extension and timetable identified in the Department's RFP. CVPS also supports the request for a time extension identified in the Department's RFP, but believes that this could be accomplished in a shorter time-frame, two to three months. CVPS believes that the Department's consultant should help the Department to develop a position on the key restructuring issues, or if this proceeding is to be a contested case, the consultant could help the Department to develop prefiled testimony. VEIC, CVPS, and BED supported the continuation of settlement discussions during the time period in which the Department's consultant is working. VELCO encourages the Department and its retained consultant to work together to analyze and to resolve any issues that would facilitate the Department's effective involvement in continued settlement negotiations.

CLF does not believe that the hiring of an outside consultant should be needed or would add value in this proceeding, given the over eighteen months of workshops on this matter and the level of expertise involved in the proceeding. GMEU raises concerns about the costs which would result from the extended continuation of this proceeding and the use of consultants during that period. GMEU believes that the remainder of what needs to be decided in this proceeding is within the expertise of the Board and the parties participating in the process.

With regard to funding sources for the retention of a consultant, the Department supports the use of the accrued interest on the EEU Fund as a means with which to pay its consultant. CVPS does not support funding the Department's consultant through billbacks to parties and recommends that the costs for any consultant assistance be funded through interest income earned on the EEU Fund or the Department's existing EEU evaluation budget. BED and GMP support using the accrued interest on the EEU Fund. VELCO supports funding the Department's consultant through the existing EEU evaluation budget.

CLF recommends that funding for that consultant should be provided either from the Department's budget or through billbacks to the affected utilities. CLF and GMEU do not support using either unallocated energy efficiency charge interest or evaluation funds, maintaining that the hiring of a Department consultant for this proceeding is beyond the scope of the purposes of those funds.

With regard to the proposed schedule for the remainder of the proceeding, the Department supports the continuation of settlement negotiations and supports the suggestion by some parties that the Board schedule a status report in 90 days to report on the settlement negotiations. In its reply comments, the Department provided an update to its RFP process, stating that it is in the process of evaluating two proposals and is on target to make a selection by January 26.

CVPS and VELCO propose that the Board hold a status conference in 90 days, at which parties will inform the Board of the progress on settlement negotiations or whether a litigation schedule would be the better course. GMP and VEIC see benefit in setting a docket schedule that allows sufficient time both for issue resolution and to productively engage the Department's consultant, but they did not offer a specific schedule. BED has no specific timetable for the remainder of the proceedings, but if the litigation schedule is to move forward, BED supports bifurcating the proceeding.¹

CLF recommends that the Board set a hearing schedule that provides for initial testimony to be due in April 2009 and hearings in June 2009. CLF believes that this time frame provides sufficient opportunity for the parties to submit proposal(s) to the Board for consideration and/or to continue settlement conversations. GMEU suggests a process in which all parties file testimony on the draft recommendation in February, file rebuttal testimony in March, and a hearing is held in April, after which the Board would render its decision.

III. DISCUSSION

As noted at the status conference, the Department has the option to retain a consultant for any services the Department will require during a contested docket. The Department's filing indicated its willingness to continue with the settlement process while it proceeds working with its consultant. The Department also indicates its willingness for the meeting between the settlement group and the Department's consultant to facilitate the process toward settlement. In addition, the majority of parties indicate a willingness to continue with the settlement

1. At the prehearing conference on October 1, 2008, parties discussed whether this proceeding should be bifurcated. The schedule portion of this Order discusses bifurcation further.

negotiations and support time in the schedule for that process. The Department and several parties support allowing 90 days in the schedule for negotiations. Given the majority of parties' willingness to continue to negotiations, the Board agrees that an additional 90 days, from the date of the December 31 status conference, should be provided in the schedule. The Board also believes this timeframe provides the Department with sufficient opportunity to retain a consultant. The Board intends to hold a status conference after the 90-day period to set the schedule for the remainder of the proceedings. If no settlement is reached, the Board intends to set a hearing schedule that provides for initial testimony to be due in June 2009.

With regard to the funding of the Department's consultant, the Department requests that the Board approve funding through the interest accrued from the EEU fund. However, the Department's request is incomplete, because it does not include a dollar amount for the funds requested. Therefore, the Board is not ruling on the Department's request at this time. If the Department still wishes to request an EEU funding source, it should file a request explaining why its request is an appropriate use of interest funds and providing more specifics on the dollar amounts and timeframes for the consultant expenditures.

III. SCHEDULE

At the status conference and in filings to the Board, several parties proposed additional time in the schedule for settlement negotiations, which we accept. In addition, we will schedule a status conference for April 29th to consider the establishment of the rest of the schedule based upon the results of the settlement negotiations.

At the prehearing conference on October 1, 2008, parties discussed whether this proceeding should be bifurcated, with the first phase focusing on the issue of whether a change in the EEU structure is warranted. If the Board decides to change the structure, then the docket would proceed to a second phase which would address details associated with the new structure. Parties agreed that the discussion of bifurcation and resulting schedule should wait until parties had an opportunity to discuss settlement. If no settlement is reached in the current settlement negotiations, parties should address the issue of bifurcation in their proposed schedules.

April 24, 2009 Stipulation and/or progress report to be filed; if no, or partial, settlement reached, parties to file proposed schedule for the remainder of the proceeding.

April 29, 2009 Status conference

So ORDERED.

Dated at Montpelier, Vermont, this 29th day of January, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: January 29, 2009

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)